REMARKS

Claims 1-10, 13-18, 20-22, and 24-25 remain pending in the instant application. Claims 1-10, 13-18, 20-22, and 24-25 presently stand rejected. Claim 5 is amended herein. Entry of this amendment and reconsideration of the pending claims are respectfully requested.

Claim Rejections – 35 U.S.C. § 103

Claims 1, 2, 3, 7-9, 14-17, 20-22, and 24-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Beier et al. (US 2003/0065812 A1) in view of Brustoloni et al. (US 6,625,149) and Ganfield (US 2004/0218631).

Claims 4-6, 10, 13, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Beier in view of Ganfield and Brustoloni as applied to claims 1, 8, 14, and 21 above, and further in view of Kaniyar et al (7,219,121).

"All words in a claim must be considered in judging the patentability of that claim against the prior art." M.P.E.P. § 2143.03.

Claim 1 recites:

A method comprising: receiving a packet at a network device; **pre-fetching a protocol control block (PCB) associated with the received packet into a cache of a selected processing unit**; queuing the received packet for processing; pre-fetching a header associated with the received packet into the cache of the selected processing unit; and retrieving the PCB for the received packet from the cache of the selected processing unit when the selected processing unit is ready to process the received packet.

In contrast, the combined references do not teach or suggest (at least) the above-emphasized portion of the claim. The Office Action alleges (in page 2) that Beier teaches pre-fetching a protocol control block (PCB) associated with the received packet into a cache of a selected processing unit. To this end, the Office Action recites an entry

at time t2 that is cache as entry 323 in a unified cache. Applicants traverse this allegation because the unified cache is not a cache of a selected processing unit. Beier instead teaches away from using a cache of a selected processing unit because Beier acknowledges problems with a unified cache. For example, in paragraph 35 Beier discusses a cache synchronization protocol wherein applications distributed on different processors keep each other up-to-date regarding the current status of entries in a unified cache. This problem is compounded where PCBs, for example, are prefetched into the cache of the selected processing unit in response to a packet of an existing connection being received (as in claim 5).

Applicants also traverse the implication that the unified cache is a cache of a selected processing unit because the alleged motivation (the "cache is shared by all processors to enhance memory access") is too general and is not directed towards claim limitation. Further the alleged motivation teaches away from claim limitations because using a unified cache would incur performance limitations (e.g., run more slowly) due to processor contention issues for processors trying to process packets in real time.

As stated by the Office Action, the combined references (Beier and, by implication, Brustoloni) fail to disclose pre-fetching a header associate with the packet into the cache of the selected processing unit. The Office action asserts Ganfield to attempt to make up for the deficiencies of Beier. Applicants traverse the combination of references because the Office Action fails to objectively resolve the level of ordinary skill in the art to which the invention pertains at the time of the invention. Notwithstanding any availability of Ganfield as 102(e)-type art, the mere recitation of Ganfield fails to objectively resolve the level of ordinary skill in the art to which the invention pertains at the time of the invention because (as the record demonstrates) Ganfield was published (November 4, 2004) after the filing date of the instant invention (November 12, 2003). MPEP 2141.03 section III states in relevant part:

> The importance of resolving the level of ordinary skill in the art lies in the necessity of maintaining objectivity in the obviousness inquiry." Ryko Mfg. Co. v. Nu-Star, Inc., 950 F.2d 714, 718, 21 USPQ2d 1053, 1057 (Fed. Cir. 1991).

> The examiner must ascertain what would have been obvious to one of ordinary skill in the art at the time the invention was made, and not to the inventor, a judge, a layman, those skilled in remote arts, or to geniuses in the art at hand. Environmental Designs, Ltd. v. Union Oil Co., 713 F.2d 693, 218 USPQ 865 (Fed. Cir. 1983), cert. denied, 464 U.S. 1043 (1984)(emphasis added).

Applicants submit that the recitation of unpublished art does not properly and objectively determine the level of skill of a person having ordinary skill in the relevant art at the time of the invention. In contrast, the unpublished material is (instead) held to be in confidence by the USPTO. Further, the response does not establish that Ganfield is a person having ordinary skill in the relevant art at the time of the invention, and does not establish, for example, that he is not one of the "geniuses in the art at hand" (id.). Accordingly, Applicants respectfully submit that the Office Action has not established a prima facie case of obviousness.

Further to establishing a prima facie case of obviousness, MPEP 2141 section II states in relevant part:

> As reiterated by the Supreme Court in KSR, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries. The factual inquiries enunciated by the Court are as follows:
>
> > (A) Ascertaining the differences between the claimed invention and the prior art; and [sic]
> >
> > (B) Ascertaining the differences between the claimed invention and the prior art; [sic] and
> >
> > (C) Resolving the level of ordinary skill in the pertinent art (emphasis added).
>
> Additionally, MPEP 2141 section II states in relevant part:
>
> Office personnel fulfill the critical role of factfinder when resolving the Graham inquiries. It must be remembered that while the ultimate determination of obviousness is a legal conclusion, the underlying Graham inquiries are factual. When making an obviousness rejection, Office personnel must therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. In certain circumstances, it may also be

> important to include explicit findings as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would have known or could have done. Factual findings made by Office personnel are the necessary underpinnings to establish obviousness.
>
> Once the findings of fact are articulated, Office personnel must provide an explanation to support an obviousness rejection under 35 U.S.C. 103. 35 U.S.C. 132 requires that the applicant be notified of the reasons for the rejection of the claim so that he or she can decide how best to proceed. Clearly setting forth findings of fact and the rationale(s) to support a rejection in an Office action leads to the prompt resolution of issues pertinent to patentability.
>
> In short, the focus when making a determination of obviousness should be on what a person of ordinary skill in the pertinent art would have known at the time of the invention, and on what such a person would have reasonably expected to have been able to do in view of that knowledge. This is so regardless of whether the source of that knowledge and ability was documentary prior art, general knowledge in the art, or common sense" (emphasis added).

Here, Ganfield is documentary prior art, and mere recitation of documentary prior art (especially documentary prior art that was held in confidence by the USPTO at the time of the invention) does not properly determine obviousness as highlighted immediately above. Accordingly, applicants respectfully submit that the Office Action has not established a prima facie case of obviousness because of a failure to maintain objectivity by properly resolving the level of skill of a person having ordinary skill in the relevant art at the time of the invention.

Consequently, the combination of references in view of Ganfield fails to teach or suggest all elements of the claims as required under M.P.E.P. § 2143.03. For at least the reasons discussed above, applicants request that the instant §103(a) rejections be withdrawn.

Independent claims 14 and 21 contain limitations that are similar to claim 1 as discussed above and are allowable for at least the same reasons by which claim 1 is allowable. The dependent claims are novel and nonobvious over the prior art of record for at least the same reasons as discussed above in connection with their respective independent claims, in addition to adding further limitations of their own. Accordingly,

Applicants respectfully request that the instant § 103 rejections of the dependent claims be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, it is believed that the applicable rejections have been overcome and all claims remaining in the application are presently in condition for allowance. Accordingly, favorable consideration and a Notice of Allowance are earnestly solicited. The Examiner is invited to telephone the undersigned representative at (206) 292-8600 if the Examiner believes that an interview might be useful for any reason.

CHARGE DEPOSIT ACCOUNT

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a). Any fees required therefore are hereby authorized to be charged to Deposit Account No. 02-2666. Please credit any overpayment to the same deposit account.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Date: September 30, 2008

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CERTIFICATE OF MAILING/TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically via EFS-Web to The United States Patent and Trademark Office on the date shown below.

/Kandice D. Austin/ September 30, 2008
Kandice D. Austin ***Date***